1. On any view, persons who are *participes criminis* in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours). This is the natural and primary meaning of the term "accomplice". But in two cases, persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the purposes of the rule, viz.:

2. Receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny:

3. When X has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted, of his having committed crimes of this identical type on other occasions, as proving system and intent and negativing accident; in such cases the court has held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration.

In the present case P.W. 14 might have been an accomplice within the third category of persons mentioned above if there had been evidence to show that the accused had committed crimes of an identical type on other occasions; but there is no such evidence. In my opinion, therefore, on the evidence before him the learned Magistrate wrongly held that P.W. 14 was an accomplice. Having come to the conclusion that P.W. 14 was an accomplice he was right in warning himself against the danger of convicting on the uncorroborated evidence of that witness; but in my view there was sufficient corroborative evidence connecting the accused with the crime. I may add that it is difficult to understand how the learned Magistrate, having held that P.W. 14 was an accomplice and that his evidence is unworthy of credit and that apart from this there was not a shred of evidence to show that the accused had that guilty knowledge requisite to constitute the charge, held that there was a case to answer and called upon the accused to enter his defence.

Another point for consideration is whether that part of the evidence of the accused where he testified that one Wong Hwa (from whom he said that he had acquired the bicycles) had told him that the three bicycles were bought by him, was hearsay evidence and therefore improperly admitted. Now, as a general rule, statements made by persons not called as witnesses are inadmissible to prove the truth of the facts stated. In the present case the fact that he has told that the bicycles in question were lawfully acquired is admissible evidence of the state of mind of the accused because it is relevant to show that he did not have reason to believe that the bicycles in question were stolen property (section 14 of the Evidence Ordinance, 1950). As stated in 13 *Halsbury's* Laws of England 2nd ed. p. 573, para 645: "A statement is hearsay if tendered to prove the truth of the facts asserted; it is original evidence if its materiality depends on the fact that it was made, and not on the fact that it was true." Wong Hwa was not called as a witness and naturally the weight and value of the evidence given by the accused that Wong Hwa had made such a statement to him is very much reduced.

For the above reasons I held that on the evidence before him the learned Magistrate wrongly held that P.W. 14 was an accomplice and I set aside the order acquitting and discharging the accused and ordered a retrial before another Magistrate.

Re-trial ordered.

Re JOHARI BIN RAMLI

[Cr. R. J. (Spenser Wilkinson J.) November 28, 1955]

[Penang — Criminal Revision No. 43 of 1955]

Criminal trial — Sentence — Recording of previous convictions by Magistrate — Need for care in selecting sentence in case of juvenile delinquents.

In this case the accused who was 21 or 22 years of age was convicted on a charge of possession of house-breaking implements, an offence under s. 28(1)(ii) of the Minor Offences Ordinance, 1955. He had a number of previous convictions but details of these were not recorded by the Magistrate who only noted: "The accused admits several (six) previous convictions for theft, house-breaking, possession of stolen property, etc." The learned Magistrate sentenced the accused to 10 days' imprisonment. On revision the learned Judge called for a Probation Officer's report and after considering the report, he set aside the sentence and substituted an order binding over the accused in the sum of $500 to be of good behaviour and to come up for sentence when called upon and in the meantime to be under the supervision of a Probation Officer.

Semble: where the accused has previous convictions, either a complete list of the previous convictions with full details thereof should be put in and marked as an exhibit or the Magistrate himself should record details of all the convictions showing what the charge was, the date of conviction and the sentence imposed.

CRIMINAL REVISION.

D. C. Jackson (Sr. Federal Counsel) for the Crown.

Accused in person.

Spenser Wilkinson J.: — The accused in this case, who is a young man of 21 or 22, was found in possession of house-breaking implements at about midnight on the 20th October, 1955 and pleaded guilty to a charge under section 28(1)(ii) of the Minor

Offences Ordinance, 1955. When found he had a chisel, a torchlight, a gunny sack and a spare sarong, so that the offence was by no means a trivial one of its kind. It is an offence punishable with both a fine of $250 and imprisonment for six months. The accused was, however, sentenced to only ten days' imprisonment from the date of arrest, although he had admitted to six previous convictions.

My first comment on this case is that the only information on the record with regard to the previous convictions is as follows :—

"The accused admits several (six) previous convictions for theft, house-breaking, possession of stolen property, etc."

This is by no means the first occasion on which I have found previous convictions noted quite generally in this way by Magistrates, and I wish to emphasize that in my view this method of recording previous convictions is quite inadequate. Either a complete list of the previous convictions with full details thereof should be put in and marked as an exhibit or the Magistrate himself should record details of all the convictions showing what the charge was, the date of the conviction and the sentence imposed.

Had the Magistrate in the present case done this I think he would have realised that the record and the sentences previously imposed upon this accused were such that very careful consideration had to be given to the question of sentence.

At the hearing of the case on revision the learned Deputy Public Prosecutor supplied me with details of the accused's previous convictions which are as follows :—

8.7.46 (in Juvenile Court) — Theft, s. 380. 4 strokes of the rottan.

17.12.46 — Theft, s. 379. 6 strokes of the rottan.

11.10.47 — Recent possession of property, s. 34(1) of Minor Offences Ordinance. 10 strokes of the rottan and two years at Taiping Boys' School.

14.12.49 — House-breaking to commit theft; theft and house-breaking; theft. 6 months' rigorous imprisonment on each charge concurrently.

10.7.50 — Identity card offence and dishonestly receiving stolen property. One day's imprisonment and three years' imprisonment.

It will be seen that the punishments imposed upon this youth in the past have been very unfortunately selected, particularly when on the second offence for theft, the previous whipping having proved ineffective, he was sentenced to a second whipping and when on the 11th October, 1947 he was sentenced to a third whipping.

It appeared to me on a careful consideration of this record that the alternatives before me now were either to impose the maximum term of six months' imprisonment or to give the accused an opportunity to abandon his life of crime and to endeavour to lead an honest life. It appeared to me that a short term of imprisonment such as six months (which with remissions would probably amount to only a few months) was far too short a period to enable any reformative process to be effective; and that by sending the boy to gaol again now I would only be postponing the probable difficulties in the future and reducing his chances of turning away from crime.

I therefore adjourned the case in order to obtain a full report from the Probation Officer. It appeared from this report that the accused had been a driver of heavy motor vehicles; and upon inquiry it has been ascertained that although his driving licence has expired he will be able to obtain a new one without further test. The Probation Officer was of opinion that the accused genuinely desired to turn over a new leaf. I came to the conclusion therefore that my proper course was to bind him over on probation.

The learned Deputy Public Prosecutor did not oppose this course, and I therefore set aside the sentence of ten days' imprisonment imposed by the learned Magistrate and substituted an order binding over the accused in the sum of $500 for a period of one year to be of good behaviour and to come up for sentence when called upon and in the meantime to be under the supervision of the Probation Officer, Penang and Province Wellesley.

I would like to take this opportunity of pointing out to Magistrates the great importance of a careful selection of sentence in regard to young men of this type who having a criminal record going back to an early age can still be looked upon, although over-age, as juvenile delinquents. There are often circumstances in which short terms of imprisonment have to be imposed, but it should be borne in mind that a series of short terms of imprisonment has very little effect in reforming wrong-doers and often has a tendency to convert them into habitual criminals.

Order accordingly.